

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Conservatorship of the Estate of  
FARRELL E. MARCELIN SR.

B205218

PAM A. MARCELIN,

(Los Angeles County  
Super. Ct. No. BP103765)

Petitioner and Appellant,

v.

GEMMA M. JOHNSON,

Objector and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Reva G. Goetz, Temporary Judge. Affirmed.

George M. Halimi for Petitioner and Appellant.

Augustine and Seymour and Frederick J. Seymour for Objector and  
Respondent.

---

## ***INTRODUCTION***

The parties to this action agreed to binding arbitration regarding the issue of ownership of real property of the deceased father of the parties. The arbitrator determined that the realty was subject to an oral trust for the benefit of three full blooded siblings of decedent's second marriage to the exclusion of seven siblings of the decedent's first marriage. The arbitrator further determined that it was decedent's intent that title be held by one of the siblings for the benefit of the three siblings. In a petition to the Superior Court to vacate the arbitration award the probate court denied the petition to vacate the award; ruled that the trust is invalid; and ruled that except as provided in the court's order, the arbitration award was confirmed.

A timely appeal was filed.

## ***FACTUAL AND PROCEDURAL SYNOPSIS***

Farrell E. Marcelin, Sr. ("decedent") died on December 16, 2006, and at the time of his death was a resident of the County of Los Angeles, California. Decedent had seven children as a result of his marriage to his first wife, Sylvia. As a result of decedent's marriage to his second wife, Judith, he had three children.

The real property which is in contention in this litigation is located at 3338 W. 81st Street, Inglewood, California 90305.

On or about December 27, 1993, decedent signed a grant deed to the property which reads in relevant part "Farrell E. Marcelin, a widower, grants to Desiree Marcelin McNeal, as her sole and separate property. . . ." The grantee is hereafter referred to as

“Desiree.”<sup>1</sup> The grant deed was recorded on December 28, 1993, in the Office of Los Angeles County Recorder as Instrument No. 93-2523962.

At the time the decedent signed the grant deed, it was purportedly understood by all of the children of decedent that Desiree was not to be the owner of the realty but Desiree was holding the title for her father in trust.

After the demise of the father, a dispute arose among the children of the decedent over ownership of the property. Desiree admits and contends that the grant deed is merely an instrument of trust. Desiree, however, contends that she is not holding the title to real property in trust for the decedent’s estate, rather she is holding the title to the realty in trust for the benefit of the children of decedent by the second marriage, i.e. Desiree, Gemma Marie Marcelin (“Gemma”) and Gina Marcelin Williams (“Gina”).

On the other hand, petitioner Pam A. Marcelin (“Pam”), a daughter of decedent by his first marriage, contends that the trust fails because the beneficiaries of the trust are unknown, duration of the trust is not stated in an instrument of trust, and the manner in which the trust is to be administered is unspecified. As a result, contends Pam, the realty is property of the decedent’s estate and all of the children from both marriages should receive an equal share of the decedent’s estate.<sup>2</sup>

*Petition for letters of administration filed on March 29, 2007, (by daughter Pam)*

On March 29, 2007, petitioner filed with the probate court a petition for letters of administration to represent the decedent’s estate. The petitioner stated in relevant part:

“[T]he assets of estate of decedent and their values are zero at the time of filing the Petition for Letters of Administration. . . . Petitioner has filed this petition and has

---

<sup>1</sup> Because the parties to this litigation share in a common last or middle name, namely Marcelin, for ease in referring to the parties, their first names only will be used in this opinion unless context otherwise dictates. No disrespect to the parties is intended.

<sup>2</sup> The decedent died intestate. He made attempts to execute two wills prior to his demise, but for reasons not herein relevant neither will complied with the necessary legal requirements for an effective valid will.

nominated herself as the representative of the estate of decedent. The representative of estate of decedent intends to file a (Probate Code Section) 850 petition against the third parties to enforce the claim of estate against third parties. . . .”

Under Probate Code section 850,<sup>3</sup> petitioner claims authority to petition the probate court to determine the ownership of decedent’s real property where the title is disputed.

*Competing petition for letters of administration filed on May 4, 2007, (by daughter Gemma)*

On May 4, 2007, respondent Gemma filed her competing petition for letters of administration to represent the decedent’s estate contending that the estate of the decedent does not have any assets. Pam contended that the grant deed is an invalid instrument of trust and must be voided by the probate court. As such, the real property is the property of the estate of the decedent, and the real property should be distributed equally among all the children of decedent upon his demise. Pam further contended assuming the grant deed is a valid instrument of trust then Desiree is holding the title to the real property in trust for the benefit of the estate of the decedent. As such, the real property must be distributed equally among all the children of the decedent upon his demise.

*Agreement to arbitrate on August 6, 2007*

On August 6, 2007, counsel for Pam and counsel for Gemma and Desiree agreed to arbitrate the issue of the party most suitable to serve as the administrator of the estate of the decedent by binding arbitration. The probate court was so informed and the court

---

<sup>3</sup>

Probate Code section 850 is contained in Part 19 of the Probate Code entitled “Conveyance or Transfer of Property Claimed To Belong to Decedent or Other Person.” Section 850 sets forth those persons who may file a petition requesting that the court make an order under this part. Apparently Pam is claiming entitlement to bring her petition under subdivision (2)(D) which purportedly casts her as an authorized claimant as follows: “(D) Where the decedent died having a claim to real or personal property, title to or possession of which is held by another.”

was further informed that ownership of the real property was to be submitted to the arbitrator also for decision.

*Arbitration terms*

To frame the issue of ownership of the real property, Pam submitted a Probate Code section 850 petition to Gemma and Desiree. The section 850 petition was not filed with the probate court due to the unavailability of an administrator. The gist of the section 850 petition, however, was that the grant deed is a void instrument of trust; the real property is an asset of the decedent's estate and the title to the realty should be distributed to all of the decedent's children. On or about October 17, 2007, Desiree submitted her objection to Pam's section 850 petition.

The parties to the controversies agreed to retain Edward M. Ross, a retired judge, as the arbitrator. No formal arbitration agreement was signed. The issues before the arbitrator were:

1. Which party is most suitable as the administrator of the estate of the decedent; and
2. Whether the estate of the decedent is the owner of the disputed real property.

*Arbitration hearing on October 25, 2007*

On October 25, 2007, the arbitration commenced. The arbitration award was issued on October 29, 2007. The arbitrator concluded that:

1. The grant deed is an instrument of trust;
2. Desiree is the trustee of the trust; and
3. Desiree is holding the title for the beneficiaries of the trust.

In explanation of his award, the arbitrator stated as follows:

"It was determined that the best approach is to determine that if an oral trust was created then the Arbitrator should determine just whom the beneficiaries of that trust were to be, i.e. either all of the ten children of Farrell and Sylvia and Judith or just the three children of Ferrell and Judith. [¶] Unfortunately the state of the title to the property located at 3338 West 81st Street, Inglewood, CA (the property) leaves much to be desired. All parties agree that the title does not really reflect its true nature -- the question

is just what was the real purpose behind the quit claim deed [sic] dated 12/28/93 wherein Farrell deeded the property to Desiree, on its face, as her sole and separate property.

“ . . . .

“ . . . This entire arbitration proceeding revolves around the issue of Farrell’s intent at that time. Did he intend an absolute vesting in Desiree? All parties are in agreement, and the testimony of all witnesses is to the effect that the answer to that question is an emphatic ‘no.’ Everyone agrees that Farrell continued to act as if he were the one controlling the actions on the property, i.e. sale, fixing it up, etc.

“ . . . .

“The Arbitrator finds that the real property located at 3338 West 81st Street, Inglewood, CA 90305 and described as Lot 1 of Tract No. 29538 as per map recorded in Book 722, pages 20 and 21 of maps in the office of the County Recorder of Los Angeles is held by DESIREE MARCELIN McNEAL as Trustee for the joint benefit of DESIREE MARCELIN McNEAL, GEMMA MARIE MARCELIN and GINA MARCELIN WILLIAMS.”

The decision of arbitration regarding the identity of beneficiaries of the trust was solely based on the testimony of one of the witnesses called by Gemma, one Wylene Haynes, stating that Desiree was given power to allocate the beneficial ownership in any manner that she wanted based on a statement of the deceased that Desiree would be fair to her sisters from decedent’s second marriage. In that regard, the arbitrator stated:

“This seems to give Desiree the power to allocate the beneficial ownership in any manner that she wants although this really appears to be limited by the testimony of Wylene Haynes that Farrell was satisfied that Desiree would be fair to her sisters Geema [sic] and Gina.”

The arbitrator did not make any determination as to the validity or enforceability of the oral trust under the statute of frauds.

*Petition to vacate the arbitration award on November 8, 2007, (by daughter Pam)*

On November 8, 2007, Pam filed her petition with the probate court to vacate the arbitration award and filed a first supplement to the petition on November 19, 2007,

contending that the oral trust in favor of Desiree is invalid and unenforceable under the statute of frauds. Pam further contended that assuming the oral trust is valid and enforceable, the arbitrator had exceeded his authority in making a decision pertaining to the beneficiaries of the trust. Pam contended it was clear that at no time was the issue of trust beneficiaries submitted to the arbitrator for his decision, thereby necessitating a vacation of the award in its entirety or in the alternative the decision of the arbitrator regarding the beneficiaries of the trust must be corrected by deleting the names of the beneficiaries of the trust. As a consequence the names of the beneficiaries of the trust must be submitted to the probate court for its decision.

On December 5, 2007, Desiree filed her response and requested the probate court to confirm the arbitration award. Pam filed her reply on December 7, 2007.

*Probate Court hearing on December 17, 2007, and subsequent order on January 11, 2008*

On December 17, 2007, the probate court conducted a hearing and on January 11, 2008, issued its order, which is stated verbatim in relevant part: “The Petition of Pam A. Marcelin to Vacate Arbitration Award, or Declare the Trust Invalid, and the Response thereto of Gemma M. Johnson, came on regularly for hearing on December 17, 2007, in Department 9 of the above entitled Court, the Honorable Reva G. Goetz, Judge Pro Tempore, presiding.

“George M. Halimi appeared on behalf of Petitioner, Pam A. Marcelin. Frederick J. Seymour appeared on behalf of Respondent, Gemma M. Johnson.

“Upon consideration of the Petition and Response, and all documents on file in the matter, and upon hearing arguments of counsel, the Court finds:

“1. All notices as required by law have been given.

“IT IS ORDERED, ADJUDGED and DECREED that:

“1. The Petition to Vacate the Arbitration Award issued by the Honorable Edward M. Ross, Judge of the Superior Court, Retired, on October 29, 2007, is denied;

“2. The Petition to Declare the Trust Invalid relating to an oral trust concerning ownership of real property commonly known as 3338 West 81st Street, Inglewood, California, is granted; and

“3. Except as provided in this Order Granting the Petition to Declare Trust Invalid, the Arbitration Award After Binding Arbitration issued by the Honorable Edward M. Ross, Judge of the Superior Court, Retired, on October 29, 2007, is confirmed.”

Pam contends that the decision of the probate court is erroneous in that the oral trust is invalid and confirming the arbitration award without invalidating the trust instrument by way of grant deed is erroneous as a matter of law, because it amounts to a correction of the arbitration award that has affected the merits of the arbitrator’s decision.

*Timely notice of appeal filed on January 11, 2008*

On January 11, 2008, appellant, Pam, filed a timely notice of appeal.

### ***STANDARD OF REVIEW***

The facts are not in dispute. It is the application of the law to the undisputed facts that is the core of the contentions on appeal. As accurately stated by appellant in her opening brief, “Matters presenting pure questions of law, not involving the resolution of disputed facts, are subject to the appellate court’s independent (‘de novo’) review: i.e., the appellate court gives no deference to the trial court’s ruling or the reasons for its ruling, but instead decides the matter anew. (Ghirardo v. Antonioli (1994) 8 Cal.4th 791, 799; Diamond Benefits Life Ins. Co. v. Troll (1998) 66 Cal.App.4th 1, 5). The appellate court is in at least as good a position as the trial court (and often in a better position) to decide questions of law, given the benefits of appellate collegiality and plurality and the opportunity for thoughtful debate on appeal. (See Beasley v. Wells Fargo Bank (‘Beasley II’) 1991 235 Cal.App.3d 1407, 1415, 1 Cal.Rptr. 2d 459, 463).”



This court notes that *Beasley v. Wells Fargo Bank* has been disapproved of by *Olson v. Automobile Club of Southern Cal.* (2008) 42 Cal.4th 1142, on an unrelated point.

### ***DISCUSSION***

The proper disposition of the appeal centers around the scope of the binding arbitration agreement and whether the arbitrator exceeded his authority. We are compelled to hold that the award of the arbitrator was within his authority but should only be confirmed as modified by the trial court.

In the words of the arbitrator, “. . . the state of the title to the property located at 3338 West 81st Street, Inglewood, CA (the property) leaves much to be desired. . . .” This court finds that observation to be an understatement. Perhaps that is why the parties decided to commit the matter to arbitration in view of the formidable legal obstacles confronting the parties, not the least of which is the bar presented by the statute of frauds to enforcement of an oral trust involving realty.

It is perhaps instructive in deciding this case to briefly revisit the seminal case of our high court and examine some of the principles of arbitration established in that case before going further. In *Moncharsh v. Heily & Blasé* (1992) 3 Cal.4th 1, our supreme court observed in affirming confirmation of an arbitration award, the parties to a private arbitration impliedly agree that an arbitrator’s decision will be both binding and final.<sup>4</sup> As held by the California Supreme Court, it is implied that the award is both binding and final; the merits of an arbitration award, either on questions of fact or of law, are not subject to judicial review, except as provided by Code of Civil Procedure section 1286.6;

---

<sup>4</sup>

We note that the agreement to arbitrate in this instance was not signed by the parties or their agents. Neither side appears to take issue with the absence of signatures on the arbitration agreement. Accordingly, the issue has been waived for purposes of this appeal.

even though an error of law appears on the face of the arbitration award and causes substantial injustice, it is not subject to judicial review; and the Legislature has expressed a ““strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.”” (*Moncharsh, supra*, 3 Cal.4th at p. 9.)

We bear in mind the admonition of our Supreme Court in *Moncharsh*, strongly endorsing public policy in favor of private arbitration as declared by the California legislature in Code of Civil Procedure section 1286.6 in deciding this appeal. However, the legislature did not intend to leave parties to an arbitration agreement without recourse to correction of an award in certain instances. That recourse is expressed in Code of Civil Procedure section 1286.6. The section provides in relevant part: “Subject to Section 1286.8, the court, unless it vacates the award pursuant to Section 1286.2, shall correct the award and confirm it as corrected if the court determines that: [¶] (a) There was an evident miscalculation of figures or an evident mistake in the description of any person, *thing* or property referred to in the award; . . .” (Italics added.)

As indicated in Code of Civil Procedure section 1286.6, subdivision (a), this court is of the opinion that there was “an evident mistake in the description of any . . . *thing* . . . referred to in the award.”

We explain: The grant deed to Desiree is clear and unambiguous on its face in granting the realty in question as her sole and separate property; the purported interpretation of the grant deed as a trust is simply not legal under the statute of frauds found in Civil Code section 1624 requiring that transfers of realty be in writing; in this instance the creation of an “oral trust” of realty is patently unenforceable under the general proposition set forth in Civil Code section 1624; even if the oral trust were to be deemed valid, there is no evident trust purpose and no named beneficiaries. The only thing we know from the record in this case is that Desiree was eventually free to create beneficiaries as she saw fit. This court sees no limitation on Desiree’s purported power to determine beneficiaries.

In a word, the arbitrator committed an evident mistake when he declared the deed absolute to Desiree to involve an oral trust. The “thing” before him was a grant deed and

not an oral trust. Pursuant to section 1286.6 of the Code of Civil Procedure, the trial court was within its power to modify the award as set forth in its order of January 11, 2008, and to confirm the award as corrected, affirming the validity of the grant deed and invalidating the purported oral trust.

***DISPOSITION***

The order and decision of the trial court dated January 11, 2008, is affirmed. Each side to bear its own costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

**WOODS, J.**

**We concur:**

**PERLUSS, P.J.**

**JACKSON, J.**